

**48-2e-112 Partnership agreement -- Scope, function, and limitations.**

- (1) Except as otherwise provided in Subsections (3) and (4), the partnership agreement governs:
  - (a) relations among the partners as partners and between the partners and the limited partnership;
  - (b) the activities and affairs of the limited partnership and the conduct of those activities and affairs; and
  - (c) the means and conditions for amending the partnership agreement.
- (2) To the extent the partnership agreement does not provide for a matter described in Subsection (1), this chapter governs the matter.
- (3) A partnership agreement may not:
  - (a) vary a limited partnership's capacity under Section 48-2e-105 to sue and be sued in its own name;
  - (b) vary the law applicable under Section 48-2e-106;
  - (c) vary any requirement, procedure, or other provision of this chapter pertaining to:
    - (i) registered agents; or
    - (ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter;
  - (d) vary the provisions of Section 48-2e-204;
  - (e) vary the right of a general partner under Subsection 48-2e-406(2)(b) to vote on or consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership;
  - (f) eliminate the duty of loyalty or the duty of care except as otherwise provided in Subsection (4);
  - (g) eliminate the contractual obligation of good faith and fair dealing under Subsections 48-2e-305(1) and 48-2e-409(4), but the partnership agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;
  - (h) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;
  - (i) vary the information required under Section 48-2e-115 or unreasonably restrict the duties and rights under Section 48-2e-304 or 48-2e-407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
  - (j) vary the power of a person to dissociate as a general partner under Subsection 48-2e-604(1) except to require that the notice under Subsection 48-2e-603(1) be in a record;
  - (k) vary the causes of dissolution specified in Subsection 48-2e-801(1)(f);
  - (l) vary the requirement to wind up the limited partnership's activities and affairs as specified in Subsections 48-2e-802(1), (2)(a), and (4);
  - (m) unreasonably restrict the right of a partner to maintain an action under Part 10, Actions by Partners;
  - (n) vary the provisions of Section 48-2e-1005, but the partnership agreement may provide that the limited partnership may not have a special litigation committee;
  - (o) vary the right of a partner to approve a merger, interest exchange, conversion, or domestication under Subsection 48-2e-1123(1)(b), 48-2e-1133(1)(b), 48-2e-1143(1)(b), or 48-2e-1153(1)(b); or
  - (p) except as otherwise provided in Section 48-2e-113 and Subsection 48-2e-114(2), restrict the rights under this chapter of a person other than a partner.

- (4) Subject to Subsection (3)(h), without limiting other terms that may be included in a partnership agreement, the following rules apply:
  - (a) The partnership agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.
  - (b) If not unconscionable or against public policy, the partnership agreement may:
    - (i) alter or eliminate the aspects of the duty of loyalty stated in Subsection 48-2e-409(2);
    - (ii) identify specific types or categories of activities that do not violate the duty of loyalty;
    - (iii) alter the duty of care, but may not authorize intentional misconduct or knowing violation of law; and
    - (iv) alter or eliminate any other fiduciary duty.
- (5) The court shall decide as a matter of law whether a term of a partnership agreement is unconscionable or against public policy under Subsection (3)(g) or (4)(b). The court:
  - (a) shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and
  - (b) may invalidate the term only if, in light of the purposes, activities, and affairs of the limited partnership, it is readily apparent that:
    - (i) the objective of the term is unconscionable or against public policy; or
    - (ii) the means to achieve the term's objective is unconscionable or against public policy.

Enacted by Chapter 412, 2013 General Session